

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 13227 of 1993****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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HARESH UMIYASHANKAR TERAIYA - Petitioner(s)**Versus****STATE OF GUJARAT & 1 - Respondent(s)**

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Appearance :

MR RR TRIVEDI for Petitioner(s) : 1,
 MR HM PRACHCHHAK, AGP for Respondent(s) : 1,
 None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 23/12/2005****ORAL JUDGMENT**

1. In this petition under Article 226 of the Constitution of India, the petitioner has prayed for appropriate writ, direction and/or order restraining respondent No.1 from removing the cabin of the

petitioner. A further prayer is also made directing the respondent No.2 to decide the application dated 25-10-93 made by the petitioner. It is the case on behalf of the petitioner that since 1980, petitioner is having a *pan galla* cabin opposite Capitol Talkies at Jetpur on the land known as "old police line". It appears from the record that the land in question is vested in the government as enemy property. It is the contention on behalf of the petitioner that as the respondents were trying to disturb the possession of the petitioner in spite of the petitioner submitted an application to respondent No.2 in whose control the property is situated, neither the possession was regularized nor the rent was fixed and therefore, the petitioner has preferred the present Special Civil Application for the aforesaid relief.

2. An affidavit-in-reply is filed on behalf of the respondent No.1 and has submitted that the petitioner is unauthorized occupant of the property and his having no right, title and/or interest over the property. It is also further submitted that as per the provision of the Enemy Property Act, 1968 (for short "the Act"), the said property cannot be given on lease and/or rent or cannot be disposed of in any other way. Shri Prachchhak, learned AGP has relied upon one order passed by the learned

Single Judge of this court passed in Special Civil Application No.969 of 1993, wherein similar situated persons who were in occupation and possession of the very building had approached this court and the learned Single Judge of this court by its order dated 27-4-1993 has dismissed the said Special Civil Application by observing that it is ultimately for the Assistant Custodian of Enemy Property, Mumbai to consider the case for regularization or for lease agreement if at all permissible in accordance with law.

2. Heard learned advocates appearing for the parties.

3. It is not in dispute that at present the petitioner is neither a lessee nor paying any rent. It is also not in dispute that the land in question upon which the petitioner is having occupation is not allotted to him and that the petitioner is in illegal occupation and possession of the land in question upon which he has put up the occupation. Under the circumstances, as such petitioner has no right to continue under the land in question though petitioner might be there since 1980 as alleged. It is also not in dispute that the property in question is declared as Enemy Property Act and all the rights of the property shall vested with the Custodian or

the person authorized by the custodian i.e. respondent No.2 herein. Therefore, it is ultimately for the respondent No.2 to consider the request of the petitioner either to accept the rent from the petitioner and/or to remove the cabin of the petitioner. However, the petitioner cannot claim and/or pray that he cannot be removed unless there is a valid lease agreement in his favour.

4. Under the circumstances and considering the order passed by the learned Single Judge of this court dated 27-4-93 passed in Special Civil Application 969 of 1993, the present Special Civil Application is required to be dismissed and is accordingly dismissed. However, it will be open for the petitioner to move an appropriate application before respondent No.2 within a period of one month from today for regularization of his possession and/or giving the land in question / the occupation in question on lease and to determine the rent and on receipt of the same, respondent No.2 may consider the same in accordance with law and on merits and considering the case of other persons and the said exercise to be done within a period of two months from the date of receipt of such application. Until then parties are directed to maintain status quo and the petitioner to

abide by the decision that may be taken by respondent No.2 on the application that may be submitted by the petitioner and the respondents are directed to take further action on the basis of the decision that may be taken by respondent No.2 as stated above. However, it is made clear that this court has not expressed any opinion on merits of the case and it is ultimately for respondent No.2 to take appropriate decision in accordance with law and on merits.

5. For the reasons as stated above and with the above observations and directions, the present Special Civil Application is disposed of. Petitioner to serve the copy of this order to respondent No.2 immediately and inform the respondent No.1 that he has served the copy of the order upon the respondent No.2 as stated above. Rule discharged. However, there will be no order as to costs.

(M.R.SHAH, J)

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